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May 16, 1996

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: CC Docket No. 96-98
Implementation of the Local Competitive
Provisions in the Telecommunications Act of 1996

Dear Mr. Caton:

Enclosed for filing please find an original and sixteen (16) copies, of the Comments of ALLTEL Telephone Services Corporation, in the referenced rulemaking proceeding.

Please address any questions respecting this matter to the undersigned counsel.

Very truly yours,

Carolyn Hill

Carolyn C. Hill

CCH/ss

Enclosures

cc: Ms. Janice Myles (w/diskette)
International Transcription Service

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

To: The Commission

COMMENTS

ALLTEL Telephone Services Corporation

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SUMMARY

The Telecommunications Act of 1996 ("96 Act") is a carefully balanced Act which represents a weighing of the interests of incumbent LECs with those of potential entrants into the local exchange market. There is an explicit recognition that not all of the incumbent LECs are the same nor are they required to be treated the same as evidenced by the treatment of the small and mid-sized LECs in Section 251(f) of the 96 Act.

The 96 Act envisions that facilities-based competition will develop in the local exchange market on the basis of the culmination of successful negotiations between incumbent LECs and potential entrants. These negotiated agreements may or may not meet the requirements of Section 251(b) or (c), but they must be submitted to the State commissions for approval. During the course of these private party negotiations, the parties are free to ask a State commission to mediate. To the extent that the negotiations break-down, the State commissions have a role to play as arbiter with ultimate recourse to the federal district courts by aggrieved parties.

The FCC also has a defined role to play in the implementation of the 96 Act. That role, however, is not the expansive one proposed in its Notice of Proposed Rulemaking whereby it would adopt an over-reaching regime of explicit rules addressing interconnection. Rather, the most significant role that the Commission can play and, indeed, the one that Congress envisioned, is that of providing flexibility so that facilities-based competition in the local exchange market can develop under the parameters of the 96 Act.

This proceeding, the Universal Service proceeding, and the Commission's proposed proceeding on access charge reform will all have a significant effect on the ALLTEL companies'

continued ability to effectively participate in the local exchange marketplace. ALLTEL encourages the Commission to be mindful of the challenges faced by small and mid-sized companies, such as the ALLTEL companies. Many of the competitors in the local exchange market will be large, multi-faceted, and multi-national companies, such as AT&T, MCI, and Time Warner. They are formidable competitors by any standard. They do not require protection or favorable treatment to be effective competitors. Considering this, in its deliberations in these proceedings, the Commission should thoughtfully and thoroughly weigh the competitive implications of its decisions against the likely benefits to all consumers including those served by the mid-sized and rural LECs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

COMMENTS OF ALLTEL TELEPHONE SERVICES CORPORATION

ALLTEL Telephone Services Corporation, on behalf of its local telephone exchange affiliates (hereinafter "ALLTEL" or the "ALLTEL companies"), respectfully submits its Comments on the Commission's Notice of Proposed Rulemaking ("NPRM") released April 19,1996 in the above captioned matter.

In its NPRM the Commission addresses at length its proposed role with respect to the implementation of the Telecommunications Act of 1996 ("96 Act"). Further, it points out that this proceeding is one of a number of interrelated proceedings it is conducting designed to "advance competition, to reduce regulation in telecommunications markets and at the same time to advance and preserve universal service to all Americans." NPRM p.3. There is, as the Commission has indicated, an interrelationship between the instant proceeding, its Universal Service proceeding, and its upcoming proceeding to reform its Part 69 access charge rules. Id. at 3.

The ALLTEL companies are small or mid-sized LECs located in fourteen (14) states and collectively serving 1.6 million access lines. They fall within the definition of rural telephone companies that Congress adopted in Section 3 (a)(47) of the 96 Act and as qualify as well for the

suspension or modification provision relating to small and mid-sized LECs contained in Section 251(f) of the 96 Act.

All of the proceedings referenced by the Commission are of profound importance to the ALLTEL companies. The three proceedings will have a significant effect on the ALLTEL companies' continued ability to effectively participate in the local exchange marketplace. In resolving the issues in these three proceedings, ALLTEL encourages the Commission to be mindful of the challenges faced by small and mid-sized LECs. While ALLTEL is prepared to meet the challenges of a competitive local exchange marketplace, the Commission must recognize that many of the entrants in that marketplace will be large, multi-faceted, and multi-national companies, such as AT&T, MCI, and Time Warner.* They are formidable and substantial competitors by any standard. They do not require protection or favorable treatment to be effective competitors. With this background in mind, ALLTEL urges the Commission to thoughtfully and thoroughly weigh the competitive implications of its decisions against the likely benefits to all consumers, including those served by mid-sized and rural LECs.

A. Scope of Regulations

In the NPRM the Commission stated that it will take a proactive role in implementing Congress' objectives, and thus, intends to adopt national rules that are designed to secure the full benefits of competition for consumers with due regard for the work already done by the states.

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*According to published financial reports, at year end 1995, AT&T had assets of $88.9B, MCI had assets of $19.3B, and Time Warner had assets of $22.1B. ALLTEL, in contrast, had assets of $5.1B.

Id. at 11. As part of the process, the Commission proposes that these rules explicate in detail the statutory requirements of Sections 251 and 252. Id. at 13.

While the Commission does have a role to play in implementing the 96 Act, ALLTEL submits that it must be mindful of the carefully constructed ground rules that Congress established for competition in the local exchange market and the foundation upon which that competition is built. Specifically, the focus of Sections 251 and 252 of the 96 Act is to enable facilities-based competition to develop in the local exchange market. The underpinning of these sections is that this competition is to result from the culmination of successful interconnection negotiations between incumbent LECs and telecommunications carriers. These negotiated agreements may or may not meet the requirements of Section 251(b) and (c), but they must be submitted to the State commissions for approval. During the course of these private party negotiations, the parties are free to ask a State commission to mediate areas of disagreement. To the extent that the negotiations break-down, the State commissions have a specific role to play as arbiter with ultimate recourse to the federal district courts by aggrieved parties.

In crafting the 96 Act, the Congress also gave careful consideration to the size, scope, capabilities, and characteristics of small and mid-sized LECs, such as the ALLTEL companies. It recognized that rules which are appropriate for larger incumbent LECs that serve vast regions and have markedly different regulatory and antitrust histories are not appropriate for small and mid-sized LECs. The incumbent LECs basically fell into two categories. First, there were the regional Bell operating companies and the GTE LECs which were subject to consent decrees that precluded their ability to enter the inter-LATA interexchange market. Second, there were the

small and mid-sized LECs which were generally geographically dispersed and served a small percentage of the Nation's access lines. For the latter group, there is an explicit recognition in the 96 Act that they are different than the larger incumbent LECs. Thus, small or mid-sized companies (i.e., those with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate) have the right under Section 251 to petition their respective State commissions for suspension or modification of the obligations imposed on them under Section 251(b) or (c). Their respective State commissions are to grant these requests if it can be demonstrated that this action is necessary to avoid a significant adverse impact on users of telecommunications services generally; to avoid imposing a requirement that is unduly economically burdensome or technically infeasible; and is consistent with the public interest, convenience and necessity.

As earlier indicated, the 96 Act does give the Commission a defined role in the implementation process. That role involves: (1) the identification of the network elements with respect to the unbundled access contemplated in Section 251(c)(3); (2) the responsibility for numbering administration; (3) the continued enforcement of exchange access and Section 201 interconnection requirements and obligations in effect at the time the 96 Act was adopted; and (4) the duty to perform the role of a State commission if the latter fails to discharge its responsibility under Section 252.

It is also significant that, since the passage of the 96 Act, Congress has been very vocal in its insistence that the Commission give proper recognition to Congressional intent in implementing the 96 Act. (e.g., Senator Pressler's letter dated February 21, 1996 to the Commission which said, "Congress has already done the heavy lifting when it comes to policy

choices in telecommunications reform.") Thus, after considering the express statutory language in Sections 251 and 252, coupled with the legislative history of the 96 Act, ALLTEL believes that the answer to the Commission's query as to whether it should adopt expansive, explicit rules with respect to Sections 251 and 252 is "No".

ALLTEL believes that the most significant role that the Commission can play and, indeed, the one that the Congress envisioned, is that of providing flexibility so that facilities-based competition can develop under the parameters set forth in the 96 Act. Consequently, rather than an over-reaching regime of explicit rules addressing interconnection, it is necessary that incumbent LECs and new entrants be able to reach mutually beneficial agreements on a timely basis and that State commission participation in this process be permitted to proceed without unwarranted impediments.

B. Obligations Imposed by Section 251(c) on "Incumbent LECs"

2. Interconnection, Collocation, and Unbundled Elements

(a) Interconnection

Before turning to the specific questions posed by the Commission in this section of the NPRM, it is important that the term "interconnection" be defined. It is not, contrary to some of the professed beliefs of the interexchange carriers, a service that is provided by an incumbent LEC. Rather, the interconnection contemplated by the 96 Act involves the physical linkage of an incumbent LEC's facilities or equipment with the facilities or equipment of a requesting telecommunications carrier for the transmitting and routing of telephone exchange and exchange access service. ALLTEL submits there is no ambiguity in the 96 Act with respect to

interconnection. It is consistently treated as the physical linkage of facilities or equipment involving two separate networks and nothing more. An incumbent LEC's interconnection obligations are separate and apart from its provision of services, such as transport and termination. Interconnection obligations and transport and termination services, as the Commission has correctly concluded, are to be treated and priced differently under the 96 Act. (NPRM at 19)

The incumbent LEC's interconnection obligations under Section 251(c) relate to its existing or in-place facilities or equipment. The 96 Act does not require that an incumbent LEC must build new facilities or buy new equipment solely for the purpose of discharging its Section 251(c) interconnection obligations.

In the NPRM the Commission tentatively concludes that uniform interconnection rules are needed to facilitate competitive entry in multiple states. ALLTEL disagrees with this assessment and the supporting rationale. A fundamental requirement of the 96 Act is that incumbent LECs and potential entrants must, in the first instance, be afforded the opportunity to negotiate the terms of any interconnection agreement. There is no prescribed role for the FCC in this process, and even the role of the State commissions is limited by the 96 Act. Simply stated, the 96 Act does not give the Commission the authority to require that there be uniform interconnection rules.

Moreover, the Commission's assumption that such rules are needed to facilitate competition in multiple states ignores two facts. There is, first of all, a recognition in the 96 Act that throughout the U.S. not all LECs and the areas they serve are the same. The foremost example of this is the special provision in the 96 Act relating to small or mid-sized LEC; the so-called "2 percent companies". The 96 Act explicitly recognizes that it may not be in the public

interest for the Section 251(b) and (c) obligations to be imposed on these companies. The ultimate determination of this fact rests not with the FCC, but with the incumbent LEC's particular State commission under Section 251(f).

Secondly, the Act does not specify or require that there be simultaneous entry in multiple states by new entrants. Multi-state incumbent LECs are certainly free to negotiate multiple entry with requesting telecommunications carriers, but there is no statutory provision in the 96 Act that this can or should be required by the FCC. ALLTEL believes that if there is an alleged abuse by an incumbent LEC of the duty to negotiate, the appropriate remedy rests with the State commission; it is not for the FCC to preempt the right of private party negotiations or the role of the States with respect to interconnection.

(1) Technically Feasible Points of Interconnection

At page 20 of the NPRM, the Commission requests comments on what constitutes a "technically feasible point" of interconnection with respect to an incumbent LEC's network for the purpose of compliance with Section 251(c)(2)(B). Once again, ALLTEL believes that this is an area for the negotiating parties to resolve. Absent that, States may become involved in the process in their roles as mediators or arbiters pursuant to Section 252. Even in that instance, the number of interconnection points should be initially limited to end offices or tandems. The small and mid-sized LECs have interconnected with other networks at the end office or tandem level and that level constitutes a point in the network where "seamlessness" can be easily assured. Testing and maintenance capabilities exist at this level; capabilities which are not easily attainable at other points in the network. The ability to support network interconnection not only from a functional

network standpoint, but also from an operational and administrative perspective is enhanced by limiting interconnection points to the end office or tandem office. If ALLTEL were required to interconnect with a number of competitive entrants at individualized, unique interconnection points, not only would ALLTEL be competitively disadvantaged, but the quality of interconnection between the entrants could be unequal. "Technically feasible" should not be construed to mean "technically possible". A balance of cost considerations, reliability, and inherent fairness must be weighed in determining interconnection points.

For the reasons discussed above, a universal guideline as to what constitutes a technically feasible point or points is inappropriate. Specifically, technical feasibility is determined not only by hardware, but also by the LEC's operating support systems, billing constraints and other administrative considerations. Consequently, contrary to the Commission's tentative conclusion on page 20 of the NPRM, what is technically feasible for one LEC may not be for another LEC.

As earlier pointed out, interconnection is an obligation and not a service. Thus, competitive entrants, absent agreement between the parties, must select from the incumbent LECs' available inventory of interconnection options. This accomplishes two goals: 1) it assures that all competitors enter the local exchange market on an equal footing; and 2) the risk of damaging or impairing the network is minimized.

(4) Relationship Between Interconnection and Other Obligations Under the 1996 Act

(b) Collocation

Having tentatively concluded that it has authority to require, in addition to physical collocation, virtual collocation and meet point interconnection, any other reasonable method of interconnection, the Commission then tentatively concludes that it should adopt national standards where appropriate to implement the collocation requirements of the 96 Act. Id. at 23. ALLTEL disagrees with both of these tentative conclusions. As we have stated earlier in these comments, this is not an area that Congress has reserved for FCC jurisdiction. An incumbent LEC may agree to physical collocation in the negotiation process. However, to the extent that this is mandated by the 96 Act, ALLTEL believes that there are constitutional concerns relative to a taking under the Fifth and Fourteenth Amendments which the Congress has not overcome by the mere insertion of statutory language requiring this. While the insertion of the physical collocation requirement in the 96 Act was apparently designed to remedy a statutory deficiency earlier noted in Section 201 of the 1934 Act by the reviewing court in *Bell Atlantic Telephone Cos. v. FCC*, 24 F3d. 1441 (D.C. Cir. 1994), this has not diminished ALLTEL's concern with respect to the cited constitutional issue.

c. Unbundled Network Elements

ALLTEL believes it is clear that the 96 Act requires that any unbundling of network elements must be negotiated in the first instance between the incumbent LEC and the potential entrant. However, ALLTEL does believe that it could be of assistance to the parties in their

negotiations for the FCC to identify a minimum number of network elements that could be unbundled. The level, however, should be limited to port, link, and transport. This level of unbundling is generally consistent with the level of disaggregation incumbent LECs currently employ. If the level of unbundling becomes too disaggregated, new entrants will merely assemble competitive services from the unbundled elements of the incumbent LEC without developing the facilities-based competition contemplated by the Act. If the FCC limits the mandatory elements to local loop, switching (port) capability (without reference to capacity measurements), and transport/special access (link), a level of competitive efficiency can be assured. In addition, access to database and signaling systems should be limited to that access required for call routing and completion.

d. Pricing of Interconnection, Collocation and Unbundled Network Elements

After review of the Commission's analysis and the resulting tentative conclusions set forth on pages 39-41 of the NPRM with respect to the Commission's authority under the 96 Act to determine pricing rules for interconnection, collocation, and unbundled network elements, ALLTEL must disagree with the Commission's assertion. ALLTEL believes that the FCC's proposed pricing role will unlawfully usurp the ability of LECs to negotiate these matters as required by Section 251 and the ability of State commissions to determine or review pricing pursuant to Section 252.

ALLTEL believes that until price distortions are eliminated through proceedings, such as the Universal Service proceeding and the Commission's contemplated access charge reform proceeding, that prices for interconnection and transport and termination can be expeditiously

negotiated if existing cost-based access charges are used. These costs, including the CCLC and RIC, are genuine and constitute the elements underlying the existing network - the very network that competitive entrants desire to connect to. While unbundled interconnection elements do not translate to access rate elements on a one-to-one basis, transport and termination proxies could be extracted directly from a LEC's access tariff. This approach has numerous benefits:

1. Access rates are already on file.
2. The existence of prices based on costs underlying the embedded network, including reasonable profit, would expedite the negotiation process.
3. For small and mid-sized LECS, there would be no requirement to produce cost studies which could "bog down" their interconnection negotiations.
4. The level of interconnection traffic initially contemplated between new entrants and the incumbent small or mid-sized LEC is expected to be relatively low. Utilizing access-like prices would not be unduly burdensome in the interim.
5. As the universal service, interconnection and access charge proceedings resolve historic price distortions, the process becomes self-correcting. As a result, access charges, utilized as proxy interconnection prices, will undergo an automatic migration to a more competitive commodity - like pricing level.

It would be optimal to address the three proceedings - universal service, interconnection and access charge reform - within the same time frame. Absent that, the use of access-like prices for interconnection by small and mid-sized LECs can facilitate the timely entry of competition into the local exchange markets.

6. Relationship to Existing State Regulations and Agreements

As noted at Page 55 of the NPRM, Section 251 (d)(3) of the 96 Act bars the FCC from precluding enforcement by the States of certain regulations, order and policies relating to access and interconnection obligations of LECs so long as they are consistent with the requirements of the 96 Act. In this regard, the Commission has requested comments on what types of State policies or existing negotiated agreements between carriers might be impacted by this provision or by Title II of the Act. Id. The 96 Act does not preempt state jurisdiction over intrastate access services or over intrastate communication services provided by LECs. Rather, it provides the basis for competitive entry into the local exchange market using a construct that relies on private party negotiations and limited regulatory involvement.

Further, there is nothing in the 96 Act which indicates a Congressional intent to overturn LEC agreements that were in existence prior to the implementation of the 96 Act. Many of the LEC agreements were developed in a joint-provisioning, non-competitive environment. In many instances, these agreements involve extended area service ("EAS") arrangements which were imposed on the non-competing LECs by their State commissions and which provide consumers with broad local calling areas at rates reflective of public policy considerations rather than cost causative precepts. These EAS agreements are not the type of negotiated agreements between

competing LECs contemplated in the 96 Act. Neither are they required to be offered to new entrants in the local exchange market.

(e) Interexchange Services, Commercial Mobile Radio Services, and Non-Competing Neighboring LECs

(1) Interexchange Services

ALLTEL agrees with the Commission's assessment at page 56 of the NPRM that the obligation of incumbent LECS to provide interconnection pursuant to Section 251(c)(2) does not apply to telecommunications carriers requesting interconnection for purposes of originating or terminating their interexchange traffic. As the Commission correctly observes, Section 201 is the statutory basis on which interexchange carriers have been entitled to interconnect for this purpose. ALLTEL submits this has not been changed by the 96 Act. Thus, we agree with and commend the Commission's analysis and tentative conclusion that its access charge regime has not been replaced by unbundled interconnection. Interconnection, as we have earlier stated is an obligation, while the provision of access is a service. They are not one and the same.

The 96 Act envisions that telecommunications carriers seeking to enter the local exchange market will do so through the construction of their own facilities and that, in the interim, entry can be facilitated by resale or by the provision of network elements needed by new entrants to complete their networks. The erroneous conclusions by some of the interexchange carriers that they are entitled under the 96 Act to order network elements solely to originate and terminate their interexchange traffic further underscores the need to eliminate the potential for price arbitrage and the economic inefficiencies that are created by the price distortions inherent in the current access

charge regime.

(3) Non-Competing Neighboring LECs

As earlier stated on pages 12-13, the current agreements between incumbent LECs and non-competing neighboring LECs are not within the purview of Section 251(c) of the 96 Act. These agreements are not agreements between an "incumbents" and a requesting "telecommunications carrier" for the purpose of providing "telephone exchange service and exchange access" in the local service area of the other party. Rather, these are agreements between two non-competing LECs which are designed to facilitate the provision of service to their respective customers. For that reason, they are not agreements required to be offered to new competing entrants in the local exchange market.

3. Resale Obligations of Incumbent LECs

In this part of the NPRM, the Commission addresses the resale obligations under Section 251(c) (4) of incumbent LECs and requests comments on its belief that given the pro-competitive thrust of the 96 Act and its belief that restrictions and conditions on resale are likely to be evidence of market power, it believes that the range of permissible restrictions on resale should be "quite narrow". Id. at 61. It also requests comments on its role with respect to the resale of certain services at wholesale rates.

ALLTEL believes that State commissions have the authority under the 96 Act to determine whether resale restrictions are unreasonable. Moreover, certain rates and rate structures that have become tariffed local service offerings are the historic product of State public policy goals and are, in many cases, priced below not only their fully allocated embedded costs, but also below their economic costs. These tariffed rates are not the starting point for discounted resale rates. For this reason, prior to reselling its retail services, the incumbent LEC must be allowed to rebalance

any below-cost rate(s). From these rebalanced rates, net avoided costs must be subtracted to produce the wholesale rates. Without this rebalancing, the selling of below-cost services at an additional wholesale discount will promote inefficient entry into the local exchange market and forestall the growth of facilities-based competition in that market.

5. Reciprocal Compensation for Transport and Termination of Traffic

The matter of reciprocal compensation for transport and termination of traffic is another area for State commission involvement, pursuant to Section 251(d)(2) of the 96 Act. Section 252(d) (1)(A)(i) sets forth certain requirements for reciprocal compensation:

> "... such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities...."

The language, "on each carrier's network facilities" and the "costs associated" bespeaks that each carrier should recover its own costs. One carrier's costs are unlikely to be the same as the other carrier's costs. To address this, ALLTEL believes that an asymmetrical compensation plan is needed. That is, a plan in which each carrier charges the other carrier prices based on its own costs for the transport and termination of traffic. Cost-based access charges, as previously discussed on pages 10-11, constitute a reasonable substitute for the transport and termination charges of the incumbent small and mid-sized LECs.

In summary, transport and termination agreements need to be negotiated and based on the individual costs of the respective carrier to transport and terminate traffic.

F. Exemptions, Suspensions and Modifications

ALLTEL agrees with the Commission's tentative conclusion on page 91 of the NPRM that States alone have the authority under Section 251(f) to make determinations regarding the termination of the Section 251(c) exemption for rural telephone companies as well as the suspension or modification of the Section 251(b) or (c) requirements for small or mid-sized LECs. With respect to the Commission's query as to whether or not it can or should establish some standards that would assist the States in this area, ALLTEL believes that this is not required. Small or mid-sized LECs should be able in the first instance to determine if they have received a bona fide request under Section 251(c). If there is disagreement, then ALLTEL believes the proper course of action is for the parties to request State commission assistance or intervention.

It is imperative, however, that the Commission, throughout the three interrelated proceedings (i.e., interconnection, universal service, and access charge reform) recognize the unique circumstances of rural LECs and those LECs with under two percent of the Nation's access lines and afford them the necessary flexibility to compete in the local exchange marketplace. Their efforts should not be hampered by inappropriate regulatory treatment favoring companies already possessing a competitive advantage by virtue of their vast economic resources and capabilities.

Respectfully submitted,
ALLTEL Telephone Services Corporation

By: Carolyn C. Hill

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May 16, 1996

CERTIFICATE OF SERVICE

I, Sondra T. Spottswood, hereby certify that a copy of the foregoing "Comments of ALLTEL Telephone Services Corporation" was hand delivered this 16th day of May 1996, upon the following:

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